

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA PORTMAN, in her capacity as :
executrix of the Estate of Mr. Jae :
Portman and as personal representative :
of his heirs-at-law, Barbara and :
Brittany Portman, :
----- X

Plaintiff, :
----- X

-v-

ALZA CORPORATION and JANSSEN, L.P., :
a/k/a JANSSEN PHARMACEUTICA, L.P., :
----- X

Defendants. :
----- X

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05 CIV. 10018 (DLC)

MEMORANDUM OPINION
AND ORDER

APPEARANCES:

For Plaintiff:
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Boston, MA 02108-4404

For Defendants:
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DENISE COTE, District Judge:

In this products liability case, the plaintiff, Barbara Portman ("plaintiff"), acting as Executrix for the estate of her husband, Jae Portman ("Portman"), seeks to recover damages from the defendants based on her allegation that their prescription pain medication Duragesic®, worn as a patch, caused Portman's death when it leaked and administered a lethal dose of the Schedule II narcotic. The defendants, Alza Corporation ("Alza"),

which manufactured the patch, and Janssen, L.P. ("Janssen"), which distributed the product, have moved to transfer this lawsuit to Georgia, where Portman resided, received his medical care, and died. The motion to transfer is granted.

The standard that applies to this motion to transfer pursuant to 28 U.S.C. § 1404 is well established. Section 1404 provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The "plaintiff's choice of forum is presumptively entitled to substantial deference." Gross v. British Broadcasting Corp., 386 F.3d 224, 230 (2d Cir. 2004) (citation omitted). A district court has broad discretion, however, to grant or deny motions to transfer and makes its determination based on "notions of convenience and fairness on a case-by-case basis." In re Cuyahoga Equip. Corp., 980 F.2d 110, 117 (2d Cir. 1992); see also International Business Machines Corp. v. Fair Isaac Corp., No. 05 Civ. 10296 (DLC), 2006 WL 726034, at *1 (S.D.N.Y. Mar. 23, 2006). The movant bears the burden of establishing that transfer is warranted. Fair Isaac, 2006 WL 726034, at *1. If the transferee court also has jurisdiction over the case, the court must determine whether, considering the "convenience of parties and witnesses" and the "interest of justice," a transfer is appropriate. The factors a court considers in making that determination include

- (1) the convenience of witnesses, (2) the convenience of the parties, (3) the location of relevant documents

and the relative ease of access to sources of proof, (4) the locus of operative facts, (5) the availability of process to compel the attendance of unwilling witnesses, (6) the relative means of the parties, (7) the forum's familiarity with the governing law, (8) the weight accorded the plaintiff's choice of forum, and (9) trial efficiency and the interest of justice, based on the totality of the circumstances.

Id. at *2.

Here, there is no dispute that this litigation could have been filed in Georgia. And there is virtually no connection between the New York forum and this litigation, other than plaintiff's recent adoption of New York as her domicile. In contrast, essentially all of the relevant and extensive medical care that Portman received in the many years as well as the days immediately preceding his death, including the prescribing of various pain medications, occurred in Georgia, where he and the plaintiff had their domicile until he died. Indeed, plaintiff swore when she was appointed executrix by the probate court of Georgia that she resided in Georgia and was administering the property of a decedent who was domiciled in Georgia. There are other important facts to which only Georgia witnesses may testify. An Atlanta policeman located Portman's body, which had no identification documents with it, on a sidewalk in Atlanta; the autopsy, which ascribed the cause of death to an overdose of the active ingredient in Duragesic®, was of course performed in Georgia; and to the extent that there are questions about Portman's lifestyle, or use or abuse of drugs, that are relevant to his compliance with medical directives or other issues of causation, those witnesses largely reside in Georgia.

The plaintiff argues that there are New Jersey and California witnesses with important information about the quality control and safety protocols associated with the manufacture of Duragesic®, and emphasize that this is a pharmaceutical product defect case. One of the several important treating physicians for Portman has also agreed to travel to New York for trial.

The location of the design and manufacture of the product at issue in a products liability case is an important factor to consider in evaluating a transfer motion. Consideration of that factor does not assist the plaintiff, though, since Alza, a Delaware corporation with its principal place of business in California, designed and manufactured the product in California. While Janssen is based in New Jersey, it was not responsible for either the design or manufacture of the product.

The parties largely agree that the other factors relevant to this inquiry are not material in this case. The parties are able to litigate this case in either forum; documents can be produced without difficulty for their various locations; both forums can determine and apply the relevant law with efficiency; and there is no reason to expect that the parties will be unable to obtain a relatively expeditious trial of this matter in either forum. In sum, giving due regard to the plaintiff's choice of forum, the defendants have shown with compelling evidence that there is an insufficient connection between New York and this lawsuit to allow this case to proceed here in the face of an application to transfer the case to Georgia, where Portman was domiciled and

died.

Conclusion

The defendants' motion to transfer this action to the Northern District of Georgia is granted. The pending motion to amend the complaint is also transferred to that district. The Clerk of Court shall execute the transfer.

SO ORDERED:

Dated: New York, New York
 May 17, 2006

Denise Cote
DENISE COTE
United States District Judge